

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

CARL TRAMANE MAGEE,

Petitioner,

v.

CIVIL ACTION NO. 2:22-cv-00103

DONALD F. AMES, *Superintendent*,

Respondent.

MEMORANDUM OPINION AND ORDER

On February 28, 2022, the Petitioner, proceeding *pro se*, filed his *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1). On November 1, 2022, the *Respondent's Motion to Dismiss § 2254 Petition* (Document 10) was filed.

By *Standing Order* (Document 5) entered on March 3, 2022, the matter was referred to the Honorable Dwane L. Tinsley, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On July 12, 2023, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 19) wherein it is recommended that this Court find that the Petitioner's § 2254 Petition is not timely under 28 U.S.C. § 2244(d)(1) and that the Petitioner has failed to establish any facts warranting equitable tolling of the statute of limitations to allow this Court to consider his Petition. The Magistrate Judge further recommends that this Court grant the *Respondent's Motion to Dismiss § 2254 Petition* (Document 10) and dismiss the Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas*

Corpus by a Person in State Custody (Document 1) with prejudice. Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by July 31, 2023.

Neither party has timely filed objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*. The Court **FINDS** that the Petitioner's § 2254 Petition is not timely under 28 U.S.C. § 2244(d)(1) and that the Petitioner has failed to establish any facts warranting equitable tolling of the statute of limitations to allow this Court to consider his Petition. The Court **ORDERS** that the *Respondent's Motion to Dismiss § 2254 Petition* (Document 10) be **GRANTED** and that the Petitioner's *Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody* (Document 1) be **DIMISSED with prejudice**. Lastly, the Court **ORDERS** that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Tinsley, counsel of record, and any unrepresented party.

ENTER: August 3, 2023



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA